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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MICHAEL DELGADO, an individual;

Plaintiff,

v.

ARCADIA, INC., a California corporation; and
DOES 1 through 100, inclusive;

Defendants.

CASE NO.:

COMPLAINT

JURY TRIAL DEMAND

Plaintiff Michael Delgado ("Plaintiff"), by and through his counsel of the law firm of Jones Lovelock, hereby complains and alleges against defendants and Does 1 through 100, inclusive, as follows:

THE PARTIES

1. Plaintiff is an individual that resides in Clark County, Nevada.
2. Arcadia, Inc. ("Arcadia") is a corporation that was organized under the law of the State of California and operates in the State of Nevada.
3. Plaintiff does not know the true names or capacities of Does 1 through 100, inclusive, and sues such defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible for and caused the damages herein alleged. When Plaintiff ascertains the true names and capacities of Does 1 through 100, it will amend the Complaint accordingly.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

5. Venue is proper in the U.S. District Court for the District of Nevada pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

6. Arcadia is a supplier of architectural building products that has locations across the nation, including one or more locations in Las Vegas, Nevada.

7. Plaintiff was employed by Arcadia from June of 2008 until June 7, 2017 to fabricate building products at an Arcadia fabrication facility located at 4620 Andrews Street in North Las Vegas, Nevada ("North Las Vegas Facility").

8. Plaintiff was employed on the shop floor as a fabricator and worked with other fabricators in the North Las Vegas Facility to fabricate building products.

9. Plaintiff lacked independent authority and would carry out the direct orders of his supervisors, including Mark Knutson, the Branch Manager for Arcadia's North Las Vegas Facility.

10. Plaintiff lacked independent decision-making power or influence over personnel decisions. When Plaintiff did make recommendations about personnel decisions to Mr. Knutson or other Arcadia supervisors, those recommendations were routinely ignored or disregarded.

Arcadia Failed to Pay Plaintiff the Proper Overtime Pay

11. Plaintiff was not guaranteed a weekly salary, but was paid based upon the hours that he worked and/or the vacation and/or sick time he used.

12. Plaintiff was required to provide, and did provide, the number of hours he actually worked each week to Arcadia.

13. Arcadia was aware that Plaintiff worked in excess of forty (40) hours per week for the duration of his employment and often worked six days per week.

14. For each pay period, Arcadia would issue Plaintiff a paycheck for work up to forty hours per week at his regular pay rate.

15. At times, Arcadia would also issue Plaintiff a second paycheck for some or all of the hours Plaintiff worked in excess of forty hours per week; however, Arcadia failed to pay Plaintiff at

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1 a rate not less than one and one-half times the regular rate at which he is employed for the hours that
2 exceeded forty hours per week.

3 16. At other times, Plaintiff would work well in excess of forty hours in a work week and
4 did not receive any additional compensation even at his regular rate of pay.

5 **Arcadia Created a Hostile Work Environment in its Las Vegas Facility and Retaliated Against**
6 **Plaintiff**

7 17. Plaintiff is of Mexican descent and many of the other laborers in Arcadia's North Las
8 Vegas Facility where he worked were of Hispanic descent.

9 18. Arcadia's North Las Vegas Facility Branch Manager, Mr. Knutson, and other
10 supervisors were non-Hispanic.

11 19. Mr. Knutson would regularly make comments in the workplace that the Hispanic
12 employees, without regard to their actual national origin, were "Mexican", "undocumented", and/or
13 "illegal."

14 20. Mr. Knutson also would regularly make comments to the effect that he and Arcadia
15 could mistreat Hispanic employees because such Hispanic employees were too afraid to be
16 "deported."

17 21. Arcadia's Las Vegas Branch Manager made repeated and consistent offensive jokes
18 to Plaintiff about Plaintiff being a "Mexican."

19 22. Hispanic employees in Arcadia's North Las Vegas Facility were paid less than their
20 non-Hispanic counterparts for the same work.

21 23. Hispanic employees in Arcadia's North Las Vegas Facility had fewer opportunities
22 to move to better positions than their non-Hispanic counterparts, both within Arcadia's North Las
23 Vegas Facility and to other facilities.

24 24. Hispanic employees were disciplined harsher than their non-Hispanic counterparts for
25 the same offenses. For example, when two Hispanic employees, one of whom was off the clock, got
26 into a brief altercation, Plaintiff intervened to remedy the situation, but Mr. Knutson summarily fired
27 one of the Hispanic employees. Meanwhile, when a Caucasian employee was found with drugs on
28 the premises, the Caucasian employee suffered no discipline.

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25. Plaintiff complained to his supervisors, including Mr. Knutson, about the mistreatment of Hispanic employees by Arcadia, including, but not limited to, the negative comments, ridicule, slurs, and mockery of Hispanic employees, the unequal pay of Hispanic employees compared to other non-Hispanic employees, the disproportionate discipline of Hispanic employees, and the refusal to allow Hispanics to have the same job opportunities as others.

26. Despite Plaintiff's complaints about the mistreatment and disparate treatment of Hispanic employees in Arcadia's North Las Vegas Facility, Arcadia failed to take any effective remedial action to curb or stop the mistreatment of Hispanic employees.

27. When Plaintiff made work-related requests regarding staffing and supplies to his superior, Mr. Knutson, the requests were frequently denied; when similar requests were made by Caucasian, non-Hispanic employees with similar job responsibilities, their requests were regularly granted by Mr. Knutson.

28. In fact, as Mr. Knutson's racially-motivated hostility toward Plaintiff grew, Plaintiff was forced to ask Caucasian employees to make requests relating to staffing and supplies on his behalf.

29. Following Plaintiff's complaints of the mistreatment and disparate treatment of Hispanic employees, Plaintiff was retaliated against and subject to adverse employment actions by Arcadia, including, but not limited to, harassment for trying to take time off to attend funerals of family members, unwarranted denial of work requests, and refusal of Plaintiff's request to be transferred to another facility to avoid further discrimination.

30. Plaintiff's working conditions become so intolerable that he was compelled to resign on or about June 7, 2017.

FIRST CLAIM FOR RELIEF

(Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207 *et seq.*)

31. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs, and by reference incorporate the same herein as though set forth in full.

32. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in commerce or in the production of goods for commerce, or are

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1 employed in an enterprise engaged in commerce or in the production of goods for commerce.

2 33. Plaintiff and Arcadia are subject to the FLSA regulations regarding overtime pay.

3 34. The FLSA provides that no employer shall employ any of its employees for a
4 workweek longer than forty hours unless such employee receives compensation for his employment
5 in excess of forty hours at a rate not less than one and one-half times the regular rate at which the
6 employee is employed.

7 35. Arcadia failed to compensate Plaintiff for workweeks longer than forty hours at a rate
8 not less than one and one-half times the regular rate at which Plaintiff was employed.

9 36. Plaintiff did not qualify for any of the exemptions which would permit Arcadia to pay
10 Plaintiff at a rate less than one and one-half times the regular rate at which Plaintiff was employed.

11 37. At all relevant times hereto, Arcadia willfully, knowingly, purposefully, and
12 improperly failed to pay Plaintiff overtime at the rate required pursuant to the FLSA.

13 38. Arcadia is liable to Plaintiff in the amount of Plaintiff's unpaid overtime
14 compensation and an additional, equal amount as liquidated damages.

15 39. Pursuant to the FLSA, Plaintiff is entitled to an award of reasonable attorney's fees
16 and costs.

17 **SECOND CLAIM FOR RELIEF**

18 **(Discrimination Based Upon National Origin, Race and Color (Title VII))**

19 40. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs,
20 and by reference incorporate the same herein as though set forth in full.

21 41. Plaintiff is of Mexican descent and competently performed his work duties at Arcadia.

22 42. Arcadia employees outside of Plaintiff's protected class were treated more favorably
23 than Plaintiff and other employees within his protected class.

24 43. Plaintiff was subject to egregious, degrading and bigoted insults against Mexicans,
25 restrictions on his work schedule, constrains on his job duties, and working conditions so intolerable
26 that he was forced to resign.

27 44. Arcadia does not have legitimate, nondiscriminatory reason for said employment
28 actions against Plaintiff and any claim of such would be pretext.

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(Hostile Work Environment (Title VII))

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1 57. Plaintiff suffered damages based upon his opposition to Arcadia's unlawful
2 employment acts.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Constructive Discharge)**

5 58. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs,
6 and by reference incorporate the same herein as though set forth in full.

7 59. As a result of Arcadia's pervasive discrimination and harassment, Plaintiff's working
8 conditions deteriorated to the point where it was sufficiently extraordinary and egregious to
9 overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the
10 job to earn a livelihood at Arcadia.

11 60. Plaintiff's work conditions at Arcadia became so intolerable that a reasonable person
12 would leave the job.

13 61. Plaintiff suffered damages based upon the actions and inactions of Arcadia.

14 **SIXTH CLAIM FOR RELIEF**

15 **(Violation of NRS 613.330 *et. seq.*)**

16 62. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs,
17 and by reference incorporate the same herein as though set forth in full.

18 63. Plaintiff suffered discrimination at Arcadia based upon his race, national origin and
19 color and he suffered adverse employment action based upon his opposition to unlawful employment
20 acts.

21 64. Plaintiff suffered damages based his opposition to Defendant's unlawful employment
22 acts.

23 **WHEREFORE**, the Plaintiff prays for relief against Defendant as follows:

- 24 1. A trial by jury on all issues;
- 25 2. For an award of actual, compensatory, special, and statutory damages as allowed by
26 law;
- 27 3. For an award of punitive damages as allowed by law;
- 28 4. For an award of costs and attorneys' fees as allowed by law;

5. Prejudgment interest as allowed by law;
6. For such other relief as this Court deems just and proper.

DATED this 25th day of May, 2018.

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By: /s/ Justin C. Jones

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